

Christopher Marraro
Partner
T 202.383.7006
F 202.478.0300
marraroc@howrey.com

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Via Email and First Class Mail

Sara Flanagan
Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway – 17th Floor
New York, NY 10007-1866

**Re: McGraw Edison (Belmont Avenue and Bloomfield Avenue)
Lower Passaic River Study Area**

Dear Ms. Flanagan:

We write on behalf of Cooper Industries, LLC. ("Cooper"). This letter responds to the March 10, 2010, Notice of Potential Liability for Response Actions in the Lower Passaic River ("EPA Notice") that was issued by the U.S. Environmental Protection Agency – Region 2 ("EPA") in connection with property allegedly owned by Thomas A. Edison, Inc. in Glen Ridge, New Jersey prior to 1920 ("the Glen Ridge property")¹ and the former McGraw Edison facility on Belmont Avenue in Bellville and Bloomfield, New Jersey ("the Belmont facility") that was conveyed to Battery Products, Inc., on or about April 7, 1985 by McGraw-Edison. We request that this response be placed in the Administrative Record in the above referenced matters.

We appreciate the extensions that EPA granted Cooper to respond. As further explained below, Cooper never owned or operated at either property/facility. Edison Storage Battery Company is not a Cooper corporate predecessor and, in any event, the Glen Ridge property was sold in 1919 to a third party – prior to the time that the Coordinating Parties Group ("CPG") claims that Cooper has responsibility for Edison Storage Battery Company operations. To the extent that any liability survived, it would have been acquired in 1960 by a predecessor to Exide Technologies, which is still in existence. Additionally, Cooper never owned or operated the Belmont facility either. The last corporation to own and/or operate at that site was Battery Products, Inc., a former Cooper subsidiary, which voluntarily dissolved over fifteen (15) years ago. Claims (if any) made against Battery Products, Inc., are barred under the applicable Illinois statute after five (5) years. Cooper is not the successor to Battery Products, Inc.

¹ The USEPA in its letter incorrectly reported that the property was in Bloomfield, New Jersey. The site is actually located in the borough of Glen Ridge, which was incorporated from portions of Bloomfield Township in February 1895 (see: http://en.wikipedia.org/wiki/Glen_Ridge,_New_Jersey).

Furthermore, the CPG's allegations regarding the Glen Ridge facility's operations between 1927 to 1934 and discharges containing "various heavy metals" to Meadow Brook Sewer and subsequent impacts to the Passaic River are unsubstantiated, and are based in-part on the CPG's misinterpretation of its own documents. The historical record demonstrates that the facility was not even in existence during the period 1927 - 1934. Thus, the CPG's allegations that it discharged metals during this period are wrong.

Lastly, the CPG alleges that thousands of pounds of metals were released during the period from 1914 through February 1975² as a result of discharges of wastewater effluent from the Belmont facility to the sanitary and storm (Meadow Brook) sewers and subsequently to the Second River and Passaic River (See LPRSA PRP Data Extraction Form, page 1) due to bypasses of the PVSC trunk line through the Second River Union Outlet. The CPG does not consider that the pollution control on-site pretreatment lagoon settled out the metals. Moreover, the CPG fails to report the significant sewer defects down-gradient including groundwater infiltration, cracks, leaking joints, root intrusions and substantial sediment and debris build-up on sewer effluent flow that would have impeded flow to the Passaic River.

Thus, Cooper denies any and all liability in connection with the allegations concerning set forth in the Notice Letter. Cooper never owned or operated any facility at either location. Additionally, Cooper is not the legal successor to any owner or operator of facilities at either location.

Cooper bases its analysis on a review of real property title records (1888 to the present), records found within its own corporate files, and independent historical research. Additionally in coming to our conclusions, we conducted an exhaustive review of the EPA Administrative Record, the EPA Lower Passaic River Study Area ("LPRSA") Site Files, the Passaic Valley Sewer Commission ("PVSC") records, and the NJ Department of Environmental Protection ("DEP") records relating to the Belmont Plant. We further analyzed various governmental data bases and scientific publications concerning the results of sampling and analyses with regard to the LPRSA. Lastly, we consulted with Mr. William Hengemihle ("Hengemihle"), the allocation consultant for the Cooperating Parties Group ("CPG") for the purpose of learning the basis of the allegations contained in the Notice Letter. We did so because it is our understanding that EPA has done no independent factual investigation, but instead has relied on the documents, summary sheets and analysis that were submitted to EPA by the CPG.

² February 28, 1975 is the effective date that the PVSC began operating under its National Pollutant Discharge Elimination System Permit NJ0021016 (LPRSA 0045886). All discharges from the facility to the sanitary sewer and subsequent overflows at the Second River Union Outlet to the Passaic River after this period would be "federally permitted releases" and not subject to liability under CERCLA.

**I. COOPER IS NOT RESPONSIBLE FOR THE CERCLA LIABILITIES
ALLEGED IN EPA'S NOTICE LETTER**

EPA's Notice Letter is vague and unspecific as to the timing, nature, location or frequency concerning any alleged releases from either the Glen Ridge or Belmont properties/facilities to the Passaic River. Nevertheless, the CPG alleges that wastewater discharged from the Glen Ridge and Belmont facilities either into the sanitary sewer, storm sewer, or wastewater seepage in the form of groundwater into the Second River or via the Second River Union Outlet resulted in releases of thousands of pounds of metals into the Passaic River located over 3.8 and 2.5 miles down gradient from the respective facilities. Neither the CPG nor the EPA has direct evidence to support the allegation that specific hazardous substances from either facility were released into the Passaic River. Cooper knows of no allegation that there were any direct discharges containing hazardous substances from either location to the Passaic River.

The Government has the burden of proof to show that hazardous substances were released to River from the Glen Ridge or Belmont properties/facilities and Cooper contends that the purported current allegations of Alleged Discharges are unsubstantiated. See: *United States v. Kramer*, 757 F. Supp. 397, 417 (D.N.J. 1991) ("To establish a prima facie case for liability under section 107, the government must show that: (1) the site is a 'facility'; (2) a 'release' or 'threatened release' of a 'hazardous substance' from the site has occurred; (3) the release ... has caused the United States to incur response costs; and (4) the defendants fall within at least one of the four classes of responsible persons"). Thus, even if Cooper were responsible for operations at these two sites (which it is not), there is no evidence to support the CPG's allegations.

A. Cooper Is Not the Successor during the Period of Alleged Discharges

1. Glen Ridge

The CPG alleges that Cooper is responsible for a business that CPG claims was operated by Edison Storage Battery in Glen Ridge, New Jersey between 1927 and 1934. We have exhaustively searched the title record for this property and this allegation is at odds with the facts. The property at issue was owned by Thomas A. Edison and Mina Edison from May 28, 1901 until July 11, 1901, on which date they transferred it by deed to Edison Storage Battery Company. Edison Storage Battery Company transferred the property to Glen Ridge Realty Company by deed dated June 2, 1919. Glen Ridge Realty Company transferred the property to the municipality of Glen Ridge by deed dated February 24, 1924. Glen Ridge still owns the property and it is the site of a municipal park that includes a baseball field. In short, Edison Storage Battery did not own the property during the time in which CPG claims that discharges were taking place.

Furthermore, Edison Storage Battery Company has not been existence for more than seventy (70) years. That company was a New Jersey corporation that was formed in or about

1901 and ceased commercial operations in the 1920s. Because of the length of time that has passed since the dissolution of this corporation and the fact that it was never a Cooper subsidiary, we do not have access to all of the corporate records relating to this corporation's corporate existence. There is absolutely no evidence, however, that Cooper ever acquired assets or liabilities of the Edison Storage Battery Company. In fact, it appears that the corporation did not operate on an independent basis after 1932. In 1960, the Electric Storage Battery Company (now known as Exide Technologies) acquired the Edison Storage Battery division of the McGraw Edison Corporation. To the extent that the Electric Storage Battery Company still had a corporate existence or corporate liabilities as of the 1960 acquisition, those would have all been acquired by Exide, as the CPG initially contended in its report. (See, CPG report at page 2). The 1960 acquisition by Electric Storage Battery of the Edison Storage Battery division of McGraw Edison predates the acquisition by Cooper Industries of any McGraw Edison assets or liabilities by twenty-five (25) years. In short, there is no viable theory of corporate liability under which Cooper could be liable for operations by Edison Storage Battery Company prior to its 1919 transfer of the subject property to Glen Ridge Realty Company and it cannot be held liable for discharges between 1927 and 1934 because the property was owned by Glen Ridge at the time, as it is still is today.

2. Belmont

Cooper has never owned or operated the Belmont facility. Title to that property was conveyed to Thomas A. Edison by separate conveyances in 1889, 1890 and 1916. The property was then conveyed by Mr. Edison and his wife to Thomas A. Edison, Inc. on December 15, 1925. The balance of the property was conveyed to Thomas A. Edison, Inc. by deed from John and Josephine Rotella, dated July 23, 1926. Thomas A. Edison, Inc. conveyed all of this property to McGraw Edison Company by deed dated December 31, 1956. McGraw Edison Company conveyed all of this property to Battery Products, Inc., an Illinois corporation, by an Agreement dated February 7, 1985 and subsequent deed dated April 7, 1985. Pursuant to the February 7, 1985 Agreement, Battery Products, Inc. assumed, among other things, all of the liabilities associated with McGraw Edison's operations at the property, including "all contingent and accrued liabilities." Battery Products, Inc. maintained its independence even after Cooper acquired McGraw-Edison and was never merged up into Cooper, but was at all times a separate operating subsidiary of Cooper.

Battery Products, Inc. ceased operations at the Belmont facility on or about July 31, 1987. Battery Products, Inc. sold the property to Dominick Tozzo by deed dated December 14, 1992. Battery Products, Inc. agreed by written consent of its Board of Directors to dissolve on December 22, 1994. It filed its Articles of Dissolution with the Illinois Secretary of State on January 18, 1995. Pursuant to Illinois law, all claims against Battery Products, Inc. were

required to be made within five (5) years of the corporation's dissolution.³ Because more than five (5) years have passed, any such claim is time barred.

In short, Cooper never owned or operated the Belmont property. It acquired no liabilities associated with the Belmont facility because all such liabilities were transferred to Battery Products, Inc., prior to acquisition by Cooper of McGraw Edison. Battery Products, Inc. itself has not been amenable to suit for over a decade.

B. The CPG Allegations Regarding Discharges from the Glen Ridge and Belmont Facilities to the Passaic River Are Mere Speculation.

1. CPG Misinterprets Documents to Support Glen Ridge Allegations

The CPG presents no factual information other than a 1927 Industrial Directory of New Jersey (LPRSA0046009) and Sanborn Fire Insurance Map (LPRSA0031918) which the CPG states was published in 1906 and updated in 1934 as evidence that the Glen Ridge facility operated during "at least 1927 through 1934" - seven years - and that these operations allegedly released "a variety of heavy metals to groundwater and storm sewers to Second River (See CPG April 13, 2009, LPRSA PRP Data Extraction Form for Edison Storage Battery Co et al page 1). Based on our review, the Industrial Directory (ies) and Sanborn Map, the CPG has misinterpreted the respective documents, which do not show that the Glen Ridge facility operated during this period.

The selected pages produced to EPA by the CPG of the 1927 Industrial Directory provide no evidence of the Glen Ridge Facility. This is because the Borough of Glen Ridge was a separate borough from Bloomfield at the time. A careful review of all the Industrial Directories presented by the CPG as evidence of the Bloomfield/Glen Ridge facility reveals that none of the cited directories and presented pages refers to the Glen Ridge facility. Furthermore, the Sanborn Map while published in 1906 and updated in 1934, provides no convincing evidence that the Glen Ridge facility operated during that entire time because the updated map more-likely-than-

³ See 805 ILCS 5/12.80. The statute provides in relevant part that "[t]he dissolution of a corporation ... shall not take away nor impair any civil remedy available to or against such corporation, its directors, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within five years after the date of such dissolution." See *Sharif v. International Development Group Co., Ltd.* 399 F.3d 857, 860 (C.A.7 (Ill.), 2005) ("We have clarified that "[u]nder Illinois law the five-year period after dissolution marks the outer limit for suits by dissolved firms as well as suits against them.") (citing *Citizens Elec. Corp. v. Bituminous Fire & Marine Ins. Co.*, 68 F.3d 1016, 1018 (7th Cir.1995)).

not did not remove data from the earlier version published in 1906. In 1924 the Glen Ridge facility was demolished and converted into an athletic field for Glen Ridge High School.

Lastly and with the respect to the CPG's allegation that "The Meadow Brook Sewer was still in use by parts of Bloomfield, including Edison's location in 1927" (see LPRSA PRP Data Extraction Form page 19) – this is clearly inaccurate because the Glen Ridge facility was not operating at that time. Furthermore, the CPG lacks evidence to show that the Glen Ridge facility was connected to the Meadow Brook Sewer – the undated "Bloomfield Trunk Sewers" map (Attachment 29 LPRSA00045714) showing sanitary sewers does not (1) show the Glen Ridge property or (2) depict how far the 10-inch diameter lateral sewer extends northwest along Bloomfield Avenue from its intersection with the Meadow Brook Sewer. In short, the CPG offers no direct or credible circumstantial evidence that the Glen Ridge facility was ever connected to the sewer system.

2. The CPG Allegation That Effluent Containing Metals from the Belmont Facility Discharged to the Passaic River is mere Speculation.

The CPG alleges that thousands of pounds of metals were released during the period from 1914 through February 1975 as a result of discharges of wastewater effluent from the Belmont facility to the sanitary and Meadow Brook storm sewers and subsequently to the Second River and Passaic River (See LPRSA PRP Data Extraction Form, page 1) due to bypasses of the PVSC trunk line through the Second River Union Outlet.

The CPG bases its conclusion regarding metals solely on one sample of effluent collected from the facility⁴ and has no factual basis to support its allegation that any hazardous substances (including metals or otherwise) in the facility's discharge actually if present in the effluent discharged into the Passaic River. In fact, the CPG does not account for the fate and transport of the effluent and metals after the effluent is discharged to the facility's on-site pretreatment lagoon (used for solids removal, effluent neutralization, and seepage) and subsequently discharged to the sanitary sewer, or released (via overland flow or groundwater seepage) to the storm sewer, or seeped via groundwater into the Second River and or ultimately bypassed the PVSC trunk sewer (through the Second River Union Outlet) and discharged into the Passaic River over 2.5 miles down gradient from the facility. In short, the CPG cannot demonstrate causation which it has the burden to prove. *New Jersey Turnpike Authority v. PPG Industries, Inc.*, 197 F. 3d 96 (Rd Cir. 1999)

⁴ The facility pursuant to its NPDES permit no. 01404620 with effective date of March 16, 1981 only required that the facility monitor its effluent for Biological Oxygen Demand, (BOD) Total Suspended Solids (TSS), pH and volume. The facility was not required to monitor for metals. Based on our review of the files at the PVSC, no notices of violation were issued due to permit noncompliance.

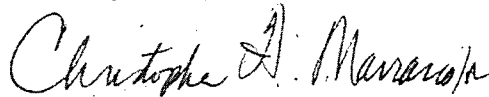
An analysis of the PVSC Sewer System Evaluation Survey, Phase II -B Results, City of Newark (North Central Area) (PVSC Report), prepared by Elson T. Killiam Associates, Inc., August 1985 indicates that the sanitary sewer system segments between the Belmont facility and the Second River Union Outlet contain many defects. These defects likely significantly altered the character and quantity of the flow including restricting effluent flow, allowing effluent to leak in and out of the sewer and sediment and debris build-up. More specifically, the sewer defects included over 56 leaking joints, 97 suspected joints and 25 segments with root intrusions. In addition, over 25 percent of the sewer segment evaluated contained heavy sediment and debris which would have restricted and possibly blocked effluent flow. The PVSC estimated that 21,000 gallons per day infiltrated evaluated sewer segments. Most of the infiltration was found to occur in six segments that the PVSC proposed for future rehabilitation. Based on the above, the CPG can only speculate that the effluent from the facility actually made it to the Passaic River and did not leak out and or change character (metals precipitate metals or diluted).

II. CONCLUSION

For the reasons stated herein, Cooper is not responsible for the CERCLA liability alleged in EPA's Notice Letter regarding either the Belmont facility or Glen Ridge facility. Cooper never owned or operated either facility and is not the successor in interest to any company that owned or operated these facilities. Moreover, there is no evidence from the Administrative Record or otherwise that proves that it is more likely than not that purported releases of hazardous substances from either the Glen Ridge or Belmont properties reached the River. Indeed, the evidence is to the contrary.

Although Cooper contends that it has no CERCLA liability in this case, the Company reserves its right to modify its position as appropriate, depending on the discovery of new information and further dialogue with EPA or the CPG. Cooper would also welcome the opportunity to consider any additional information the Agency may have in its possession and to meet with EPA to discuss this letter or any other issue the Agency may wish to discuss with Cooper in connection with the Diamond Alkali Superfund Site/Lower Passaic River Study Area matter.

Respectfully submitted,



Christopher H. Marraro

cc: Keith Odenweller, Esq.
William H. Hyatt, Esq.